

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-287
HOUSE BILL 709

AN ACT PROTECTING AND PUTTING NORTH CAROLINA BACK TO WORK BY
REFORMING THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as the "Protecting and Putting North Carolina Back to Work Act."

SECTION 2. G.S. 97-2 reads as rewritten:

"§ 97-2. Definitions.

When used in this Article, unless the context otherwise ~~requires~~ requires:

...
(19) **Medical Compensation.** – The term "medical compensation" means medical, surgical, hospital, nursing, and rehabilitative ~~services~~ services, including, but not limited to, attendant care services prescribed by a health care provider authorized by the employer or subsequently by the Commission, vocational rehabilitation, and medicines, sick travel, and other treatment, including medical and surgical supplies, as may reasonably be required to effect a cure or give relief and for such additional time as, in the judgment of the Commission, will tend to lessen the period of disability; and any original artificial members as may reasonably be necessary at the end of the healing period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical circumstances.

...
(22) **Suitable employment.** – The term "suitable employment" means employment offered to the employee or, if prohibited by the Immigration and Nationality Act, 8 U.S.C. § 1324a, employment available to the employee that (i) prior to reaching maximum medical improvement is within the employee's work restrictions, including rehabilitative or other noncompetitive employment with the employer of injury approved by the employee's authorized health care provider or (ii) after reaching maximum medical improvement is employment that the employee is capable of performing considering the employee's preexisting and injury-related physical and mental limitations, vocational skills, education, and experience and is located within a 50-mile radius of the employee's residence at the time of injury or the employee's current residence if the employee had a legitimate reason to relocate since the date of injury. No one factor shall be considered exclusively in determining suitable employment.

SECTION 3. Article 1 of Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-12.1. Willful misrepresentation in applying for employment.

No compensation shall be allowed under this Article for injury by accident or occupational disease if the employer proves that (i) at the time of hire or in the course of entering into



employment, (ii) at the time of receiving notice of the removal of conditions from a conditional offer of employment, or (iii) during the course of a post-offer medical examination:

- (1) The employee knowingly and willfully made a false representation as to the employee's physical condition;
- (2) The employer relied upon one or more false representations by the employee, and the reliance was a substantial factor in the employer's decision to hire the employee; and
- (3) There was a causal connection between false representation by the employee and the injury or occupational disease."

SECTION 4. G.S. 97-17 is amended by adding a new subsection to read:

"(e) Nothing in this section prevents the parties from reaching a separate contemporaneous agreement resolving issues not covered by this Article."

SECTION 5. G.S. 97-18 is amended by adding a new subsection to read:

"(k) In addition to any other methods for reinstatement of compensation available under the Act, whenever the employer or insurer has admitted the employee's right to compensation, or liability has been established, the employee may move for reinstatement of compensation on a form prescribed by the Commission. If the employer or insurer contests the employee's request for reinstatement, the matter shall be scheduled on a preemptive basis. This subsection shall not apply to a request for a review of an award on the grounds of a change in condition pursuant to G.S. 97-47."

SECTION 6. G.S. 97-25 reads as rewritten:

"§ 97-25. Medical treatment and supplies.

~~Medical compensation shall be provided by the employer. In case of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital, or other treatment, the Industrial Commission may order such further treatments as may in the discretion of the Commission be necessary.~~

~~The Commission may at any time upon the request of an employee order a change of treatment and designate other treatment suggested by the injured employee subject to the approval of the Commission, and in such a case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.~~

Upon the written request of the employee to the employer, the employer may agree to authorize and pay for a second opinion examination with a duly qualified physician licensed to practice in North Carolina, or licensed in another state if agreed to by the parties or ordered by the Commission. If, within 14 calendar days of the receipt of the written request, the request is denied or the parties, in good faith, are unable to agree upon a health care provider to perform a second opinion examination, the employee may request that the Industrial Commission order a second opinion examination. The expense thereof shall be borne by the employer upon the same terms and conditions as provided in this section for medical compensation.

Provided, however, if the employee so desires, an injured employee may select a health care provider of the employee's own choosing to attend, prescribe, and assume the care and charge of the employee's case subject to the approval of the Industrial Commission. In addition, in case of a controversy arising between the employer and the employee, the Industrial Commission may order necessary treatment. In order for the Commission to grant an employee's request to change treatment or health care provider, the employee must show by a preponderance of the evidence that the change is reasonably necessary to effect a cure, provide relief, or lessen the period of disability. When deciding whether to grant an employee's request to change treatment or health care provider, the Commission may disregard or give less weight to the opinion of a health care provider from whom the employee sought evaluation, diagnosis, or treatment before the employee first requested authorization in writing from the employer, insurer, or Commission.

The refusal of the employee to accept any ~~medical, hospital, surgical or other treatment or rehabilitative procedure~~medical compensation when ordered by the Industrial Commission shall bar ~~said~~ the employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the ~~refusal, in which case, the Industrial Commission may order a change in the medical or hospital service.~~refusal. Any order issued by the Commission suspending compensation pursuant to G.S. 97-18.1 shall specify what action the employee should take to end the suspension and reinstate the compensation.

If in an emergency on account of the employer's failure to provide ~~the medical or other care as herein specified~~compensation, a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the Industrial Commission.

~~Provided, however, if he so desires, an injured employee may select a physician of his own choosing to attend, prescribe and assume the care and charge of his case, subject to the approval of the Industrial Commission."~~

SECTION 7. G.S. 97-25.6 reads as rewritten:

"§ 97-25.6. Reasonable access to medical information.

(a) Notwithstanding any provision of G.S. 8-53 to the contrary, and because discovery is limited pursuant to G.S. 97-80, it is the policy of this State to protect the employee's right to a confidential physician-patient relationship while allowing the parties to have reasonable access to all relevant medical information, including medical records, reports, and information necessary to the fair and swift administration and resolution of workers' compensation claims, while limiting unnecessary communications with and administrative requests to health care providers.

(b) As used in this section, "relevant medical information" means any medical record, report, or information that is:

- (1) restricted to the particular evaluation, diagnosis, or treatment of the injury or disease for which compensation, including medical compensation, is sought;
- (2) reasonably related to the injury or disease for which the employee claims compensation; or
- (3) related to an assessment of the employee's ability to return to work as a result of the particular injury or disease.

(c) Relevant medical information shall be requested and provided subject to the following provisions:

- (1) Medical records. – An employer is entitled, without the express authorization of the employee, to obtain the employee's medical records containing relevant medical information from the employee's health care providers. In a claim in which the employer is not paying medical compensation to a health care provider from whom the medical records are sought, or in a claim denied pursuant to G.S. 97-18(c), the employer shall provide the employee with contemporaneous written notice of the request for medical records. The employer shall provide the employee with a copy of any records received in response to this request within 30 days of its receipt by the employer.
- (2) Written communications with health care providers. – An employer may communicate with the employee's authorized health care provider in writing, without the express authorization of the employee, to obtain relevant medical information not available in the employee's medical records. The employer shall provide the employee with contemporaneous written notice of the written communication. The employer may request the following additional information:

- a. The diagnosis of the employee's condition;
- b. The appropriate course of treatment;
- c. The anticipated time that the employee will be out of work;
- d. The relationship, if any, of the employee's condition to the employment;
- e. Work restrictions resulting from the condition;
- f. The kind of work for which the employee may be eligible;
- g. The anticipated time the employee will be restricted; and
- h. Any permanent impairment as a result of the condition.

The employer shall provide a copy of the health care provider's response to the employee within 10 business days of its receipt by the employer.

- (3) Oral communications with health care providers. – An employer may communicate with the employee's authorized health care provider by oral communication to obtain relevant medical information not contained in the employee's medical records, not available through written communication, and not otherwise available to the employer, subject to the following:

- a. The employer must give the employee prior notice of the purpose of the intended oral communication and an opportunity for the employee to participate in the oral communication at a mutually convenient time for the employer, employee, and health care provider.
- b. The employer shall provide the employee with a summary of the communication with the health care provider within 10 business days of any oral communication in which the employee did not participate.

(d) Additional Information Submitted by the Employer. – Notwithstanding subsection (c) of this section, an employer may submit additional relevant medical information not already contained in the employee's medical records to the employee's authorized health care provider and may communicate in writing with the health care provider about the additional information in accordance with the following procedure:

- (1) The employer shall first notify the employee in writing that the employer intends to communicate additional information about the employee to the employee's health care provider. The notice shall include the employer's proposed written communication to the health care provider and the additional information to be submitted.
- (2) The employee shall have 10 business days from the postmark or verifiable facsimile or electronic mail either to consent or object to the employer's proposed written communication.
- (3) Upon consent of the employee or in the absence of the employee's timely response, the employer may submit the additional information directly to the health care provider.
- (4) Upon making a timely objection, the employee may request a protective order to prevent the written communication, in which case the employer shall refrain from communicating with the health care provider until the Commission has ruled upon the employee's request. In deciding whether to allow the submission of additional information to the health care provider, in part or in whole, the Commission shall determine whether the proposed written communication and additional information are pertinent to and necessary for the fair and swift administration and resolution of the workers' compensation claim and whether there is an alternative method to discover the information. If the Industrial Commission determines that any party has

acted unreasonably by initiating or objecting to the submission of additional information to the health care provider, the Commission may assess costs associated with any proceeding, including reasonable attorneys' fees and deposition costs, against the offending party.

(e) Any medical records or reports that reflect evaluation, diagnosis, or treatment of the particular injury or disease for which compensation is sought or are reasonably related to the injury or disease for which the employee seeks compensation that are in the possession of a party shall be furnished to the requesting party by the opposing party when requested in writing, except for records or reports generated by a retained expert.

(f) Upon motion by an employee or the health care provider from whom medical records, reports, or information are sought, or with whom oral communication is sought, or upon its own motion, for good cause shown, the Commission may make any order which justice requires to protect an employee, health care provider, or other person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense.

(g) Other forms of communication with a health care provider may be authorized by order of the Industrial Commission issued upon a showing that the information sought is necessary for the administration of the employee's claim and is not otherwise reasonably obtainable under this section.

(h) The employer may communicate with the health care provider to request medical bills or a response to a pending written request, or about nonsubstantive administrative matters without the express authorization of the employee.

(i) The Commission shall establish annually an appropriate medical fee to compensate health care providers for time spent communicating with the employer or employee. Each party shall bear its own costs for said communication.

(j) No cause of action shall arise and no health care provider shall incur any liability as a result of the release of medical records, reports, or information pursuant to this Article.

(k) For purposes of this section, the term "employer" means the employer, the employer's attorney, and the employer's insurance carrier or third-party administrator; and the term "employee" means the employee, legally appointed guardian, or any attorney representing the employee.

~~Notwithstanding the provisions of G.S. 8-53, any law relating to the privacy of medical records or information, and the prohibition against ex parte communications at common law, an employer or insurer paying medical compensation to a provider rendering treatment under this Article may obtain records of the treatment without the express authorization of the employee. In addition, with written notice to the employee, the employer or insurer may obtain directly from a medical provider medical records of evaluation or treatment restricted to a current injury or current condition for which an employee is claiming compensation from that employer under this Article.~~

~~Any medical records or reports, restricted to conditions related to the injury or illness for which the employee is seeking compensation, in the possession of the employee shall be furnished by the employee to the employer when requested in writing by the employer.~~

~~An employer or insurer paying compensation for an admitted claim or paying without prejudice pursuant to G.S. 97-18(d) may communicate with an employee's medical provider in writing, limited to specific questions promulgated by the Commission, to determine, among other information, the diagnosis for the employee's condition, the reasonable and necessary treatment, the anticipated time that the employee will be out of work, the relationship, if any, of the employee's condition to the employment, the restrictions from the condition, the kind of work for which the employee may be eligible, the anticipated time the employee will be restricted, and the permanent impairment, if any, as a result of the condition. When these questions are used, a copy of the written communication shall be provided to the employee at the same time and by the same means as the communication is provided to the provider.~~

~~Other forms of communication with a medical provider may be authorized by (i) a valid written authorization voluntarily given and signed by the employee, (ii) by agreement of the parties, or (iii) by order of the Commission issued upon a showing that the information sought is necessary for the administration of the employee's claim and is not otherwise reasonably obtainable under this section or through other provisions for discovery authorized by the Commission's rules. In adopting rules or authorizing employer communications with medical providers, the Commission shall protect the employee's right to a confidential physician-patient relationship while facilitating the release of information necessary to the administration of the employee's claim.~~

~~Upon motion by an employee or provider from whom medical records or reports are sought or upon its own motion, for good cause shown, the Commission may make any order which justice requires to protect an employee or other person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense."~~

SECTION 8. G.S. 97-26 is amended by adding a new subsection to read:

"(g1) Administrative Simplification. – The applicable administrative standards for code sets, identifiers, formats, and electronic transactions to be used in processing electronic medical bills under this Article shall comply with 45 C.F.R. § 162. The Commission shall adopt rules to require electronic medical billing and payment processes, to standardize the necessary medical documentation for billing adjudication, to provide for effective dates and compliance, and for further implementation of this subsection."

SECTION 9. G.S. 97-27 reads as rewritten:

"§ 97-27. Medical examination; facts not privileged; refusal to be examined suspends compensation; other medical opinions; autopsy.

(a) After an injury, and so long as ~~he~~ the employee claims compensation, the employee, if so requested by his or her employer or ordered by the Industrial Commission, shall, ~~subject to the provisions of subsection (b),~~ submit himself to examination, independent medical examinations, at reasonable times and places, by a duly qualified physician ~~or surgeon who is licensed and practicing in North Carolina and is designated and paid by the employer or the Industrial Commission.~~ Commission, even if the employee's claim has been denied pursuant to G.S. 97-18(c). The independent medical examination shall be subject to the following provisions:

- (1) The ~~injured~~ employee shall ~~have~~ has the right to have present at ~~such the independent medical examination~~ any ~~duly qualified physician or surgeon~~ provided and paid by ~~him,~~ the employee.
- (2) Notwithstanding the provisions of G.S. 8-53, no fact communicated to or otherwise learned by any physician ~~or surgeon or hospital or hospital employee~~ who may have attended or examined the employee, or who may have been present at any examination, shall be privileged ~~in any workers' compensation case~~ with respect to a claim ~~pending for hearing~~ before the Industrial Commission.
- (3) Notwithstanding the provisions of G.S. 97-25.6 to the contrary, an employer or its agent shall be allowed to openly communicate either orally or in writing with an independent medical examiner chosen by the employer regardless of whether the examiner physically examined the employee.
- (4) If the examiner physically examined the employee, the employer must produce the examiner's report to the employee within 10 business days of receipt by the employer, along with a copy of all documents and written communication sent to the independent medical examiner pertaining to the employee.
- (5) If the employee refuses to submit ~~himself~~ to or in any way obstructs ~~such an~~ independent medical examination requested ~~by~~ and provided ~~for~~ by the

employer, ~~his~~ the employee's right to compensation and ~~his right~~ to take or prosecute any proceedings under this Article shall be suspended pursuant to G.S. 97-18.1 until ~~such~~ the refusal or objection ceases, and no compensation shall at any time be payable for the period of obstruction, unless in the opinion of the Industrial Commission the circumstances justify the refusal or obstruction. When the employer seeks to suspend compensation under this subdivision, it shall not be necessary for the employer to have first obtained an order compelling the employee to submit to the proposed independent medical examination. Any order issued by the Commission suspending compensation pursuant to G.S. 97-18.1 shall specify what action the employee should take to end the suspension and reinstate the compensation. The employer, or the Industrial Commission, shall have the right in any case of death to require an autopsy at the expense of the party requesting the same.

(b) ~~In those cases~~ any case arising under this Article in which there is a question as to the employee is dissatisfied with the percentage of permanent disability suffered ~~by an employee, if any employee, required to submit to a physical examination under the provisions of subsection (a) is dissatisfied with such examination or the report thereof, he shall be entitled to have as provided by G.S. 97-31 and determined by the authorized health care provider, the employee is entitled to have another examination solely on the percentage of permanent disability provided by a duly qualified physician or surgeon licensed and practicing of the employee's choosing who is licensed to practice in North Carolina or by a duly qualified physician or surgeon licensed to practice in South Carolina, Georgia, Virginia and Tennessee provided said nonresident physician or surgeon shall have been approved by the North Carolina Industrial Commission and his name placed on the Commission's list of approved nonresident physicians and surgeons, Carolina, or licensed in another state if agreed to by the parties or ordered by the Commission, and designated by him and the employee. That physician shall be paid by the employer or the Industrial Commission in the same manner as physicians health care providers designated by the employer or the Industrial Commission are paid. The Industrial Commission must either disregard or give less weight to the opinions of the duly qualified physician chosen by the employee pursuant to this subsection on issues outside the scope of the G.S. 97-27(b) examination. No fact that is communicated to or otherwise learned by any physician who attended or examined the employee, or who was present at any examination, shall be privileged with respect to a claim before the Industrial Commission. Provided, however, that all travel expenses incurred in obtaining said examination shall be paid by said employee. The employer shall have the right to have present at such examination a duly qualified physician or surgeon provided and paid by him. No fact communicated to or otherwise learned by any physician or surgeon who may have attended or examined the employee, or who may have been present at any examination, shall be privileged, either in hearings provided for by this Article or any action at law.~~

(c) The employer, or the Industrial Commission, has the right in any case of death to require an autopsy at its expense."

SECTION 10. G.S. 97-29 reads as rewritten:

"§ 97-29. ~~Compensation rates~~ Rates and duration of compensation for total incapacity.

(a) When an employee qualifies for total disability, Except as hereinafter otherwise provided, where the incapacity for work resulting from the injury is total, the employer shall pay or cause to be paid, as hereinafter provided by subsections (b) through (d) of this section, to the injured employee during such total disability a weekly compensation equal to sixty-six and two-thirds percent (662/3%) of his average weekly wages, but not more than the amount established annually to be effective ~~October~~ January 1 as provided herein, nor less than thirty dollars (\$30.00) per week.

(b) When a claim is compensable pursuant to G.S. 97-18(b), paid without prejudice pursuant to G.S. 97-18(d), agreed by the parties pursuant to G.S. 97-82, or when an employee proves by a preponderance of the evidence that the employee is unable to earn the same wages the employee had earned before the injury, either in the same or other employment, the employee qualifies for temporary total disability subject to the limitations noted herein. The employee shall not be entitled to compensation pursuant to this subsection greater than 500 weeks from the date of first disability unless the employee qualifies for extended compensation under subsection (c) of this section.

(c) An employee may qualify for extended compensation in excess of the 500-week limitation on temporary total disability as described in subsection (b) of this section only if (i) at the time the employee makes application to the Commission to exceed the 500-week limitation on temporary total disability as described in subsection (b) of this section, 425 weeks have passed since the date of first disability and (ii) pursuant to the provisions of G.S. 97-84, unless agreed to by the parties, the employee shall prove by a preponderance of the evidence that the employee has sustained a total loss of wage-earning capacity. If an employee makes application for extended compensation pursuant to this subsection and is awarded extended compensation by the Commission, the award shall not be stayed pursuant to G.S. 97-85 or G.S. 97-86 until the full Commission or an appellate court determines otherwise. Upon its own motion or upon the application of any party in interest, the Industrial Commission may review an award for extended compensation in excess of the 500-week limitation on temporary total disability described in subsection (b) of this section, and, on such review, may make an award ending or continuing extended compensation. When reviewing a prior award to determine if the employee remains entitled to extended compensation, the Commission shall determine if the employer has proven by a preponderance of the evidence that the employee no longer has a total loss of wage-earning capacity. When an employee is receiving full retirement benefits under section 202(a) of the Social Security Act, after attainment of retirement age, as defined in section 216(l) of the Social Security Act, the employer may reduce the extended compensation by one hundred percent (100%) of the employee's retirement benefit. The reduction shall consist of the employee's primary benefit paid pursuant to section 202(a) of the Social Security Act but shall not include any dependent or auxiliary benefits paid pursuant to any other section of the Social Security Act, if any, or any cost-of-living increases in benefits made pursuant to section 215(i) of the Social Security Act.

(d) An injured employee may qualify for permanent total disability only if the employee has one or more of the following physical or mental limitations resulting from the injury:

- (1) The loss of both hands, both arms, both feet, both legs, both eyes, or any two thereof, as provided by G.S. 97-31(17).
- (2) Spinal injury involving severe paralysis of both arms, both legs, or the trunk.
- (3) Severe brain or closed head injury as evidenced by severe and permanent:
 - a. Sensory or motor disturbances;
 - b. Communication disturbances;
 - c. Complex integrated disturbances of cerebral function; or
 - d. Neurological disorders.
- (4) Second-degree or third-degree burns to thirty-three percent (33%) or more of the total body surface.

An employee who qualifies for permanent total disability pursuant to this subsection shall be entitled to compensation, including medical compensation, during the lifetime of the injured employee, unless the employer shows by a preponderance of the evidence that the employee is capable of returning to suitable employment as defined in G.S. 97-2(22). Provided, however, the termination or suspension of compensation because the employee is capable of returning to suitable employment as defined in G.S. 97-2(22) does not affect the employee's entitlement to

medical compensation. An employee who qualifies for permanent total disability under subdivision (1) of this subsection is entitled to lifetime compensation, including medical compensation, regardless of whether or not the employee has returned to work in any capacity. In no other case shall an employee be eligible for lifetime compensation for permanent total disability.

~~In cases of total and permanent disability, compensation, including medical compensation, shall be paid for by the employer during the lifetime of the injured employee. If death results from the injury then the employer shall pay compensation in accordance with the provisions of G.S. 97-38.~~

(e) An employee shall not be entitled to benefits under this section or G.S. 97-30 and G.S. 97-31 at the same time.

(f) Where an employee can show entitlement to compensation pursuant to this section or G.S. 97-30 and a specific physical impairment pursuant to G.S. 97-31, the employee shall not collect benefits concurrently pursuant to both this section or G.S. 97-30 and G.S. 97-31, but rather is entitled to select the statutory compensation which provides the more favorable remedy.

~~In cases of total and permanent disability, compensation, including medical compensation, shall be paid for by the employer during the lifetime of the injured employee. If death results from the injury then the employer shall pay compensation in accordance with the provisions of G.S. 97-38.~~

(g) The weekly compensation payment for members of the North Carolina National Guard and the North Carolina State Defense Militia shall be the maximum amount established annually in accordance with the last paragraph of this section per week as fixed herein. The weekly compensation payment for deputy sheriffs, or those acting in the capacity of deputy sheriffs, who serve upon a fee basis, shall be thirty dollars (\$30.00) a week as fixed herein.

(h) An officer or member of the State Highway Patrol shall not be awarded any weekly compensation under the provisions of this section for the first two years of any incapacity resulting from an injury by accident arising out of and in the course of the performance by him of his official duties if, during such incapacity, he continues to be an officer or member of the State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled under the provisions of this Article.

(i) Notwithstanding any other provision of this Article, on July 1 of each year, a maximum weekly benefit amount shall be computed. The amount of this maximum weekly benefit shall be derived by obtaining the average weekly insured wage in accordance with G.S. 96-8(22), by multiplying such average weekly insured wage by 1.10, and by rounding such figure to its nearest multiple of two dollars (\$2.00), and this said maximum weekly benefit shall be applicable to all injuries and claims arising on and after January 1 following such computation. Such maximum weekly benefit shall apply to all provisions of this Chapter and shall be adjusted July 1 and effective January 1 of each year as herein provided.

(j) If death results from the injury or occupational disease, then the employer shall pay compensation in accordance with the provisions of G.S. 97-38."

SECTION 11. G.S. 97-30 reads as rewritten:

"§ 97-30. Partial incapacity.

Except as otherwise provided in G.S. 97-31, where the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such disability, a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than the amount established annually to be effective ~~October~~ January 1 as provided in G.S. 97-29 a week, and in no case shall the ~~period covered by such compensation be greater~~ employee receive more than 300-500 weeks of payments under this section. Any weeks of payments

made pursuant to G.S. 97-29 shall be deducted from the 500 weeks of payments available under this section. from the date of injury. In case the partial disability begins after a period of total disability, the latter period shall be deducted from the maximum period herein allowed for partial disability. An officer or member of the State Highway Patrol shall not be awarded any weekly compensation under the provisions of this section for the first two years of any incapacity resulting from an injury by accident arising out of and in the course of the performance by him of his official duties if, during such incapacity, he continues to be an officer or member of the State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled under the provisions of this Article."

SECTION 12. G.S. 97-32 reads as rewritten:

"§ 97-32. Refusal of injured employee to accept suitable employment as suspending compensation.

If an injured employee refuses employment procured for him suitable to his capacity he suitable employment as defined by G.S. 97-2(22), the employee shall not be entitled to any compensation at any time during the continuance of such refusal, unless in the opinion of the Industrial Commission such refusal was justified. Any order issued by the Commission suspending compensation pursuant to G.S. 97-18.1 on the ground of an unjustified refusal of an offer of suitable employment shall specify what actions the employee should take to end the suspension and reinstate the compensation. Nothing in this Article prohibits an employer from contacting the employee directly about returning to suitable employment with contemporaneous notice to the employee's counsel, if any."

SECTION 13. Article 1 of Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-32.2. Vocational rehabilitation.

(a) In a compensable claim, the employer may engage vocational rehabilitation services at any point during a claim, regardless of whether the employee has reached maximum medical improvement to include, among other services, a one-time assessment of the employee's vocational potential. If the employee (i) has not returned to work or (ii) has returned to work earning less than seventy-five percent (75%) of the employee's average weekly wages and is receiving benefits pursuant to G.S. 97-30, the employee may request vocational rehabilitation services, including education and retraining in the North Carolina community college or university systems so long as the education and retraining are reasonably likely to substantially increase the employee's wage-earning capacity following completion of the education or retraining program. Provided, however, the seventy-five percent (75%) threshold is for the purposes of qualification for vocational rehabilitation benefits only and shall not impact a decision as to whether a job is suitable per G.S. 97-2(22). The expense of vocational rehabilitation services provided pursuant to this section shall be borne by the employer in the same manner as medical compensation.

(b) Vocational rehabilitation services shall be provided by either a qualified or conditional rehabilitation professional approved by the Industrial Commission. Unless the parties mutually agree to a vocational rehabilitation professional, the employer may make the initial selection. At any point during the vocational rehabilitation process, either party may request that the Industrial Commission order a change of vocational rehabilitation professional for good cause.

(c) Vocational rehabilitation services shall include a vocational assessment and the formulation of an individualized written rehabilitation plan with the goal of substantially increasing the employee's wage-earning capacity, and subject to the following provisions:

(1) When performing a vocational assessment, the vocational rehabilitation professional should evaluate the employee's medical and vocational circumstances, the employee's expectations and specific requests for vocational training, benefits expected from vocational services, and other

information significant to the employee's employment potential. The assessment should also involve a face-to-face interview between the employee and the vocational rehabilitation professional to identify the specific type and sequence of appropriate services. If, at any point during vocational rehabilitation services, the vocational rehabilitation professional determines that the employee will not benefit from vocational rehabilitation services, the employer may terminate said services unless the Commission orders otherwise.

(2) Following assessment, and after receiving input from the employee, the vocational rehabilitation professional shall draft an individualized written rehabilitation plan. The plan should be individually tailored to the employee based on the employee's education, skills, experience, and aptitudes, with appropriate recommendations for vocational services, which may include appropriate retraining, education, or job placement. The plan may be changed or updated by mutual consent at any time during rehabilitation services. A written plan is not necessary if the vocational rehabilitation professional has been retained to perform a one-time assessment.

(d) Specific vocational rehabilitation services may include, but are not limited to, vocational assessment, vocational exploration, sheltered workshop or community supported employment training, counseling, job analysis, job modification, job development and placement, labor market survey, vocational or psychometric testing, analysis of transferable skills, work adjustment counseling, job seeking skills training, on-the-job training, or training or education through the North Carolina community college or university systems.

(e) Vocational rehabilitation services may be terminated by agreement of the parties or by order of the Commission.

(f) Job placement activities may commence after completion of an individualized written rehabilitation plan. Return-to-work options should be considered, with order of priority given to returning the employee to suitable employment with the current employer, returning the employee to suitable employment with a new employer, and, if appropriate, formal education or vocational training to prepare the employee for suitable employment with the current employer or a new employer.

(g) The refusal of the employee to accept or cooperate with vocational rehabilitation services when ordered by the Industrial Commission shall bar the employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension, unless in the opinion of the Industrial Commission the circumstances justified the refusal. Any order issued by the Commission suspending compensation per G.S. 97-18.1 shall specify what action the employee should take to end the suspension and reinstate the compensation."

SECTION 14. G.S. 97-38 reads as rewritten:

"§ 97-38. Where death results proximately from compensable injury or occupational disease; dependents; burial expenses; compensation to aliens; election by partial dependents.

If death results proximately from a compensable injury or occupational disease and within six years thereafter, or within two years of the final determination of disability, whichever is later, the employer shall pay or cause to be paid, subject to the provisions of other sections of this Article, weekly payments of compensation equal to sixty-six and two-thirds percent (66 2/3%) of the average weekly wages of the deceased employee at the time of the accident, but not more than the amount established annually to be effective October 1 as provided in G.S. 97-29, nor less than thirty dollars (\$30.00), per week, and burial expenses not exceeding ~~three thousand five hundred dollars (\$3,500)~~, ten thousand dollars (\$10,000), to the person or persons entitled thereto as follows:

...

- (3) If there is no person wholly dependent, and the person or all persons partially dependent is or are within the classes of persons defined as "next of kin" in G.S. 97-40, whether or not such persons or such classes of persons are of kin to the deceased employee in equal degree, and all so elect, he or they may take, share and share alike, the commuted value of the amount provided for whole dependents in (1) above instead of the proportional payment provided for partial dependents in (2) above; provided, that the election herein provided may be exercised on behalf of any infant partial dependent by a duly qualified guardian; provided, further, that the Industrial Commission may, in its discretion, permit a parent or person standing in loco parentis to such infant to exercise such option in its behalf, the award to be payable only to a duly qualified guardian except as in this Article otherwise provided; and provided, further, that if such election is exercised by or on behalf of more than one person, then they shall take the commuted amount in equal shares.

When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments. Compensation payments due on account of death shall be paid for a period of ~~400~~500 weeks from the date of the death of the employee; provided, however, after said ~~400-week~~500-week period in case of a widow or widower who is unable to support herself or himself because of physical or mental disability as of the date of death of the employee, compensation payments shall continue during her or his lifetime or until remarriage and compensation payments due a dependent child shall be continued until such child reaches the age of 18.

Compensation payable under this Article to aliens not residents (or about to become nonresidents) of the United States or Canada, shall be the same in amounts as provided for residents, except that dependents in any foreign country except Canada shall be limited to surviving spouse and child or children, or if there be no surviving spouse or child or children, to the surviving father or mother."

SECTION 15. G.S. 97-40 reads as rewritten:

"§ 97-40. Commutation and payment of compensation in absence of dependents; "next of kin" defined; commutation and distribution of compensation to partially dependent next of kin; payment in absence of both dependents and next of kin.

Subject to the provisions of G.S. 97-38, if the deceased employee leaves neither whole nor partial dependents, then the compensation which would be payable under G.S. 97-38 to whole dependents shall be commuted to its present value and paid in a lump sum to the next of kin as herein defined. For purposes of this section and G.S. 97-38, "next of kin" shall include only child, father, mother, brother or sister of the deceased employee, including adult children or adult brothers or adult sisters of the deceased, but excluding a parent who has willfully abandoned the care and maintenance of his or her child and who has not resumed its care and maintenance at least one year prior to the first occurring of the majority or death of the child and continued its care and maintenance until its death or majority. For all such next of kin who are neither wholly nor partially dependent upon the deceased employee and who take under this section, the order of priority among them shall be governed by the general law applicable to the distribution of the personal estate of persons dying intestate. In the event of exclusion of a parent based on abandonment, the claim for compensation benefits shall be treated as though the abandoning parent had predeceased the employee. For all such next of kin who were also partially dependent on the deceased employee but who exercise the election provided for partial

dependents by G.S. 97-38, the general law applicable to the distribution of the personal estate of persons dying intestate shall not apply and such person or persons upon the exercise of such election, shall be entitled, share and share alike, to the compensation provided in G.S. 97-38 for whole dependents commuted to its present value and paid in a lump sum.

If the deceased employee leaves neither whole dependents, partial dependents, nor next of kin as hereinabove defined, then no compensation shall be due or payable on account of the death of the deceased employee, except that the employer shall pay or cause to be paid the burial expenses of the deceased employee not exceeding ~~three thousand five hundred dollars (\$3,500)~~ ten thousand dollars (\$10,000) to the person or persons entitled thereto."

SECTION 16. G.S. 97-77(a) reads as rewritten:

"(a) There is hereby created a commission to be known as the North Carolina Industrial Commission, consisting of ~~seven-six~~ six commissioners who shall devote their entire time to the duties of the Commission. The Governor shall appoint the members of the ~~Commission, one for a term of two years, one for a term of four years, one for a term~~ Commission for terms of six years. ~~Of the additional appointments made in 1994, one shall be for a term expiring June 30, 1996, one for a term expiring June 30, 1998, and two for terms expiring June 30, 2000. Upon the expiration of each term as above mentioned, the Governor shall appoint a successor for a term of six years, and thereafter the term of office of each commissioner shall be six years. Not more than three~~ Three appointees-commissioners shall be persons who, on account of their previous vocations, employment or affiliations, can be classed as representatives of ~~employers, and not more than three employers.~~ Three appointees-commissioners shall be persons who, on account of their previous vocations, employment or affiliations, can be classed as representatives of employees. No person may serve more than two terms on the Commission, including any term served prior to the effective date of this section. In calculating the number of terms served, a partial term that is less than three years in length shall not be included."

SECTION 17. G.S. 97-77 is amended by adding a new subsection to read:

"(a1) Appointments of commissioners are subject to confirmation by the General Assembly by joint resolution. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before March 1 of the year of expiration of the term. If the Governor fails to timely submit nominations, the General Assembly shall appoint to fill the succeeding term upon the joint recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives in accordance with G.S. 120-121 not inconsistent with this section.

In case of death, incapacity, resignation, or any other vacancy in the office of any commissioner prior to the expiration of the term of office, a nomination to fill the vacancy for the remainder of the unexpired term shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. If the Governor fails to timely nominate a person to fill the vacancy, the General Assembly shall appoint a person to fill the remainder of the unexpired term upon the joint recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives in accordance with G.S. 120-121 not inconsistent with this section. If a vacancy arises or exists pursuant to this subsection when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis pending confirmation by the General Assembly. For the purpose of this subsection, the General Assembly is not in session only (i) prior to convening of the Regular Session, (ii) during any adjournment of the Regular Session for more than 10 days, and (iii) after sine die adjournment of the Regular Session.

No person while in office as a commissioner may be nominated or appointed on an interim basis to fill the remainder of an unexpired term, or to a full term that commences prior to the expiration of the term that the commissioner is serving."

SECTION 18. Article 1 of Chapter 97 of the General Statutes is amended by adding a new section to read:

§ 97-78.1. Standards of judicial conduct to apply to commissioners and deputy commissioners.

The Code of Judicial Conduct for judges of the General Court of Justice and the procedure for discipline of judges in Article 30 of Chapter 7A of the General Statutes shall apply to commissioners and deputy commissioners. Commissioners and deputy commissioners shall be liable for impeachment for the causes and in the manner provided for judges of the General Court of Justice in Chapter 123 of the General Statutes."

SECTION 19. G.S. 97-80(a) reads as rewritten:

"(a) The Commission ~~may make~~ shall adopt rules, in accordance with Article 2A of Chapter 150B of the General Statutes and not inconsistent with this Article, for carrying out the provisions of this Article. ~~The Commission shall request the Office of State Budget and Management to prepare a fiscal note for a proposed new or amended rule that has a substantial economic impact, as defined in G.S. 150B-21.4(b1). The Commission shall not take final action on a proposed rule change that has a substantial economic impact until at least 60 days after the fiscal note has been prepared.~~

Processes, procedure, and discovery under this Article shall be as summary and simple as reasonably may be."

SECTION 20. G.S. 97-84 reads as rewritten:

§ 97-84. Determination of disputes by Commission or deputy.

The Commission or any of its members shall hear the parties at issue and their representatives and witnesses, and shall determine the dispute in a summary manner. The Commission shall decide the case and issue findings of fact based upon the preponderance of the evidence in view of the entire record. The award, together with a statement of the findings of fact, rulings of law, and other matters pertinent to the questions at issue shall be filed with the record of the proceedings, within 180 days of the close of the hearing record unless time is extended for good cause by the Commission, and a copy of the award shall immediately be sent to the parties in dispute. The parties may be heard by a deputy, in which event the hearing shall be conducted in the same way and manner prescribed for hearings which are conducted by a member of the Industrial Commission, and said deputy shall proceed to a complete determination of the matters in dispute, file his written opinion within 180 days of the close of the hearing record unless time is extended for good cause by the Commission, and the deputy shall cause to be issued an award pursuant to such determination."

SECTION 21.(a) G.S. 150B-1(c) reads as rewritten:

"(c) Full Exemptions. – This Chapter applies to every agency except:

- (1) The North Carolina National Guard in exercising its court-martial jurisdiction.
- (2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.
- (3) The Utilities Commission.
- ~~(4) The Industrial Commission.~~
- (5) The Employment Security Commission.
- (6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.
- (7) The North Carolina State Lottery.
- (8) **(Expires June 30, 2012)** Except as provided in G.S. 150B-21.1B, any agency with respect to contracts, disputes, protests, and/or claims arising out of or relating to the implementation of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)."

SECTION 21.(b) G.S. 150B-1(e) is amended by adding a new subdivision to read:

"(e) Exemptions From Contested Case Provisions. – The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

...

(18) The Industrial Commission."

SECTION 21.(c) Any existing rule contained in Title 4 of Chapter 10 of the North Carolina Administrative Code that has not been readopted in accordance with Article 2A of Chapter 150B of the General Statutes on or before December 31, 2012, shall expire. Any rule that has been readopted by the Industrial Commission in accordance with G.S. 150B-21.2(g) on or before December 31, 2012, shall remain in effect until the rule becomes effective pursuant to G.S. 150B-21.3.

SECTION 22. As of February 1, 2011, the terms of the seven members of the Industrial Commission are as follows:

- (1) One serves a term expiring April 30, 2011.
- (2) Two serve terms expiring June 30, 2012.
- (3) One serves a term expiring April 30, 2013.
- (4) One serves a term expiring June 30, 2014.
- (5) One serves a term expiring April 30, 2015.
- (6) One serves a term expiring June 30, 2016.

The reduction from seven commissioners to six commissioners provided by Section 16 of this act shall be effected by not filling one of the two offices that expire June 30, 2012, pursuant to subdivision (2) of this section.

SECTION 23. Notwithstanding G.S. 97-31.1, this act is effective when it becomes law. Sections 4, 5, 6, 7, and 9 apply to claims pending on or after the effective date of this act. Sections 2, 3, 10, 11, 12, 13, 14, 15, and 20 apply to claims arising on or after the effective date of this act. Section 21 applies to rules adopted on or after the effective date of this act.

In the General Assembly read three times and ratified this the 13th day of June, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Dale R. Folwell
Speaker Pro Tempore of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 4:28 p.m. this 24th day of June, 2011